

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No. 7:14-CV-182-BR

WOODELL MCGOWAN, et al.,)	
)	
Plaintiffs,)	
)	
v.)	<u>ORDER</u>
)	
MURPHY-BROWN, LLC, d/b/a)	
SMITHFIELD HOG PRODUCTION)	
DIVISION,)	
)	
Defendant.)	
_____)	

This matter is before the court on plaintiffs’ two motions regarding defense expert Pamela Dalton. (DE ## 400, 402.) Defendant filed responses in opposition. (DE ## 426, 437.)

Plaintiffs move to exclude or limit Dr. Dalton’s expert opinions at trial under Daubert v. Merrell Dow Pharm., Inc., 509 U.S. 579 (1993). (Pls.’ Mem. Supp. (DE # 403) at 1.) Plaintiffs have filed similar, if not identical, motions in the related cases of McKiver v. Murphy-Brown, LLC, No. 7:14-CV-180-BR, Gillis v. Murphy-Brown, LLC, No. 7:14-CV-185-BR, and Artis v. Murphy-Brown, LLC, No. 7:14-CV-237-BR, as well as in a prior trial group of plaintiffs’ claims in this case. In each instance, the court limited, but did not completely exclude, Dr. Dalton’s opinions.

Plaintiffs also seek to exclude Dr. Dalton’s “new expert report[s],” dated 10 May 2018 and 16 November 2018, under Federal Rule of Civil Procedure 37(c)(1) for untimely disclosure. (Pls.’ Mem. Supp. (DE # 401) at 5.) In response, defendant contends the 16 November 2018 document is not a “new expert report,” but a declaration “intended to explain Dr. Dalton’s opinions for *Daubert* admissibility purposes.” (Def. Resp. Opp’n (DE # 426) at 2.)

The court has considered the 16 November 2018 declaration of Dr. Dalton, see Fed. R. Evid. 104(a), and it does not change the court's earlier conclusions regarding her opinions at trial. Accordingly, consistent with the rulings in McKiver, Gillis, and Artis, and its earlier ruling in this case, plaintiffs' motion to exclude or limit defense expert Pamela Dalton's opinions at trial (DE # 402) is ALLOWED such that Dr. Dalton may not testify about the odor monitoring study and her opinion regarding the lack of odor nuisance and DENIED as to the unreliability of self-report of odor, the biology of olfaction, and factors that influence individual perception of and response to odor. Plaintiffs' related motion in limine regarding the new expert report of Dr. Dalton (DE # 400) is DENIED AS MOOT.

This 3 January 2019.

A handwritten signature in green ink, appearing to read "W. Earl Britt", is positioned above a horizontal line.

W. Earl Britt
Senior U.S. District Judge